

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEANETTE MATEO	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
JON M. SULLIVAN	:	NO. 02-CV-4596
	:	

ORDER

AND NOW, this ____ day of September 2003, upon consideration of Plaintiff's Motion to Reinstate Civil Action, it appearing that:

- A. Plaintiff filed a complaint against Jon M. Sullivan on July 10, 2002, for alleged injuries arising out of a motor vehicle accident which occurred on July 10, 2000, in Maple Shade, New Jersey.
- B. Plaintiff did not serve the summons and complaint on defendant within the required 120 day period. After notification by the court, plaintiff's complaint was dismissed without prejudice for failure to prosecute on November 21, 2002.
- C. Plaintiff has now asked the court to reinstate her civil action by a Motion to Reinstate Civil Action filed September 3, 2003.
- D. If Plaintiff's case is not reinstated and additional time allowed for service, her cause of action will be precluded since the statute of limitations has now run.¹
- E. Pursuant to Fed. R. Civ. P. 4(m) a plaintiff must provide service of the summons and complaint within 120 days of the filing of a cause of action. The rule also provides that a district court may grant an extension

¹The prior dismissal was without prejudice as required by Rule 4(m) which would allow the Plaintiff to refile her complaint as if had never been filed. However, the statute of limitations would be a valid defense in Pennsylvania and New Jersey.

of time for service of process provided that good cause is shown for the failure to do so within the 120-day time period.

- B. The court also maintains discretionary power to grant an extension of time in order to allow for service of process "even if there is no good cause shown." Henderson v. United States, 517 U.S. 654, 662 (1996) (quoting Fed. R. Civ. P. 4 advisory committee's note).
- C. Defendant allegedly prevented service of process by falsifying his name. Such conduct would justify an extension of time to serve process. See Ditzkof v. Owens-Illinois, Inc., 114 F.R.D. 104 (E.D. Mich. 1987).
- E. Federal Rule of Civil Procedure 60(b)(3) permits relief from a final order based on "fraud, (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party," if the motion is filed within one year after the order was entered.
- F. Defendant's actions to frustrate and evade process by falsifying his name would constitute misconduct sufficient to vacate the previous order.

It is hereby **ORDERED** as follows:

- 1. Plaintiff's motion is deemed a Motion for Relief from Judgment pursuant to Rule 60(b)(3).
- 2. The previous order of this court entered November 22, 2002, dismissing the case without prejudice is vacated and this action is reinstated on the docket.
- 3. Plaintiff shall serve Defendant with the Summons and Complaint within sixty (60) days of the date of this Order.

Norma L. Shapiro, S.J.
